

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte THOMAS HAROLD ROESSLER,
JODY DOROTHY SUPRISE, ROBERT EUGENE VOGT, and
TIMOTHY JAMES BLENKE

Appeal 2007-1329
Application 09/216,545
Technology Center 3700

Decided: June 14, 2007

Before LORA M. GREEN, NANCY J. LINCK, and RICHARD M. LEBOVITZ, *Administrative Patent Judges*.

LEBOVITZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 40-47 and 49. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF CASE

The claimed invention is directed to a “pant-like, prefastened, refastenable, disposable absorbent article” adapted to contain body exudates (Specification 5-6). In plain language – a disposable diaper (Specification 6: 13-15).

Claims 40-49, all the pending claims, are on appeal (Br. 1). All the claims stand rejected over prior art.

Claims 40-47 and 49 stand rejected under 35 U.S.C. § 103(a) as obvious over SCA (GB 2 308 290 A) in view of Larsson (WO 95/27463) (Answer 3). Claim 48 stands rejected under 35 U.S.C. § 103(a) as obvious over SCA in view of Larsson, and further in view of Bruemmer (U.S. Pat. No. 5,685,873) (Answer 4).

The claims stand or fall together (Br. 4). We select claim 40, the broadest claim on appeal, as well as claim 48, as representative. *See* 37 C.F.R. § 41.37(c)(1)(vii). Claims 40 and 48 read as follows:

40. A pant-like, prefastened, refastenable, disposable absorbent article which defines a front waist region, a back waist region, a crotch region which extends between and connects said waist regions, a longitudinal direction and a lateral direction, said absorbent article further comprising:

- a) an absorbent chassis which defines an exterior surface, an interior surface opposite said exterior surface, a pair of laterally opposed side edges and a pair of longitudinally opposed waist edges;
- b) a pair of opposed elastic back panels which are respectively permanently attached to said side edges of said absorbent chassis in said back waist region of said absorbent article, said back panels extending laterally outward from said side edges;
- c) a pair of opposed elastic front panels which are respectively refastenably attached to said side edges of said absorbent chassis in said front waist region of said absorbent article to provide a refastenable joint wherein said front panel and said back panel on each side edge of said absorbent chassis are permanently connected together along a side seam to define a waist opening and a pair of leg openings and provide said pant-

like, prefastened, refastenable, disposable absorbent article, said front panels extending laterally outward from said side edges;

d) a fastener located on each of said front panel which is releasably engaged with said exterior surface of said absorbent chassis in said front waist region to provide said refastenable joint; and

e) a releasable bond located on each of said front panels which releasably bonds each front panel to said respective side edge of said absorbent chassis in said front waist region to assist in maintaining said pant-like, prefastened, refastenable, disposable absorbent article in said prefastened condition.

48. The absorbent article of claim 40 wherein said releasable bonds define a peel strength of no more than 1500 grams.

CLAIM INTERPRETATION

The first step in an obviousness analysis is to determine the meaning and scope of each claim. *Amazon.com, Inc. v. Barnes and noble.com, Inc.*, 239 F.3d 1343, 1351, 57 USPQ2d 1747, 1752 (Fed. Cir. 2001). “Only when a claim is properly understood can a determination be made whether the claim . . . renders obvious the claimed invention.” *Amazon*, 239 F.3d at 1351, 57 USPQ2d 1752 (Fed. Cir. 2001). For this reason, we begin with claim interpretation.

Claim 40 is drawn to a “refastenable, disposable absorbent article” comprising five elements: a) an absorbent chassis; b) a pair of opposed elastic back panels; c) a pair of opposed elastic front panels; d) a fastener located on the front panels; and e) a releasable bond located on the front panels.

The “absorbent chassis” is not explicitly defined in the Specification. However, it is described in the Specification in reference to Fig. 3, which shows the unfolded configuration of an example of an absorbent article in accordance with claim 40 (Specification 5: 23-26). The exemplified absorbent chassis (element a) of claim 40) comprises an outer cover 42, a bodyside liner 44, and an absorbent core 46 (Specification 7: 1-6). “The absorbent core 46 may have any of a number of shapes” (Specification 10: 31-33). In Fig. 3, the absorbent core is rectangular and smaller than the bodyside liner 44. Thus, the absorbent chassis serves as a carrier for the absorbent core and is not required to be fully absorbent itself.

The pair of elastic back panels (element b of claim 40), labeled “70” in Fig. 3, are “permanently attached” to the chassis; we interpret this to mean that the back panels are not initially a part of the absorbent chassis, but are bonded to it during manufacture (Specification 14: 15-31) to produce a final integral structure. It is the final integral structure which is claimed.

In contrast, the pair of elastic front panels (element c of claim 40), labeled “72” in Fig. 3, are not permanently attached to the chassis. Instead, the front panels are “refastenably attached to said side edges of said absorbent chassis in said front waist region.”

The elastic back and front panels are “extending laterally outward from said side edges” of the chassis. The front panels are “refastenably attached; the back panels are “permanently attached.” We interpret “side edges” to mean the entire side border of the absorbent chassis. In Fig. 3, the chassis border is straight, but we do not limit the claimed chassis to a straight border.

Claim 40 states that “said front panel and said back panel on each side edge of said absorbent chassis are permanently connected together along a side seam to define a waist opening and a pair of leg openings.” This is illustrated in Fig. 2 of the Specification which shows the diaper’s folded configuration in which the elastic front and back panels “are attached to each other along the side seam 74” (Specification 14: 26). In this finished and claimed configuration, the elastic front and back panels are sealed together to form a *continuous outward extension* permanently affixed to the “back waist region” at one end, and refastenably attached to the “front waste region” at the other end. Thus, although the claim recites that the “front panel . . . extends outwardly from said side edges” of the front waist region of the “absorbent chassis,” this limitation is satisfied only when the outwardly extending back panel is “prefastened” (recited in claim 40, element c) to the front waist region. The outward extension of the front panel is a product of the prefastening; when the diaper is opened at the front waist region, there is no outward extension of the front panel because it is *detached* from the waist region and permanently affixed to the back panel.

Each of the front panels further comprise d) a fastener and e) a releasable bond, shown in Fig. 3 as 62 and 64, respectively, which adhere to the exterior surface of the absorbent chassis (Specification 7: 24-28; 15: 32 to 16: 27) when worn by the user. When the front panel is adhered to the absorbent chassis through the releasable bond, it “extends outwardly” from the side edge of the absorbent chassis.

FINDINGS OF FACT

SCA

1. SCA describes a reclosable absorbent garment which can be used as a child or adult diaper (SCA, p. 1-2).
2. The garment has an absorbent core 4 which is placed on a webbing 1 that, when cut to form individual diapers (SCA, p. 4, ll. 19-22), forms an absorbent chassis.
3. During SCA's manufacturing process, a strip of refastenable material ("Strip 8") is attached to each side edge of the absorbent chassis to form outwardly extending tabs (SCA, p. 9, ll. 3-12). The strip can be comprised of elastic material (SCA, p. 11, ll. 11-15).
4. The diaper manufacturing process described in SCA results in affixing outwardly extending tabs (strip 8) to the absorbent chassis:
 - a) Strip 5 is attached to the web 1 (SCA, p. 5, ll. 19-26; Fig. 1) at one side.
 - b) Strip 5 comprises elements of a releasable attachment means (SCA, p. 5, l. 26 to p. 6, l. 3).
 - c) Strip 8 is releasably attached to strip 5 (SCA, p. 6, l. 8-10 and 11-12; Fig. 1). "[I]f strip 5 comprises loop elements then strip 8 would comprise hook elements" (SCA, p. 7, ll. 1-5).
 - d) Strip 13 is attached to the other side of web 1, opposite to strips 5 and 8 (SCA, p. 7, ll. 18-21; Fig. 1).
 - e) The web is folded longitudinally (SCA, p. 7, l. 25-26 (Fig. 2)). Strip 13 is on top of strip 8 after folding.
 - f) The adjacent articles (SCA, Fig. 3) are longitudinally separated by severing strip 5 (SCA, p. 8, l. 5-10) at a separation line 6 (SCA,

Fig. 1) which occurs in the middle of strip 5. Strip 5 is still releasably attached to strip 8. Strip 5 does not extend outwardly from the side edge of the absorbent chassis; it is attached to the front waist region of the absorbent chassis (SCA, Fig. 1).

- g) Strip 8 and strip 13 are intact (SCA, p. 8, ll. 7-8).
- h) Strip 8 and strip 13 are welded together (SCA, p. 8, ll. 16-20). In Figs. 4-5, two welds (17) are shown approximately in the middle of strips 8 and 13.
- i) The webs are cut at line 16, between the two welds, which leaves a free end of strip 8 (but still releasably attached to strip 5) (SCA, p. 9, ll. 3-12). The other end of strip 8 is attached to the side border of the absorbent chassis by weld 17. This is shown in Figs 7.

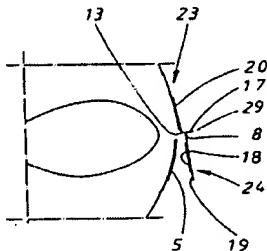


FIG. 7

- j) As explained by SCA:

Said first strip 8 comprises one half of the releasable attachment means 18. Numeral 19 denotes a free forward edge portion which is left so that the strip end can be gripped. Said first part is thus a combined strip having first and second ends 23 and 24 respectively, one of said ends being permanently attached [23] and the other being releasably attachable [24] to the front section at 5.

(SCA, p. 10, ll. 11-15.)

5. SCA describes an absorbent chassis (SCA, p. 4, ll. 19-22; Findings of Fact 2; Answer 3), satisfying element a) of claim 40.
6. Elastic back panels permanently attached and outwardly extending (strip 8 in SCA) from the side of the absorbent chassis are described in SCA, meeting the limitations of element b) of claim 40, (SCA, p. 9, ll. 3-12; p. 11, ll. 11-15; Findings of Fact 3, 4).
7. As we have interpreted claim 40, the front elastic panel is attached to the back elastic panel and is not separate from it; the front panel “extends outward” (as recited in claim 40, element c) only when the outwardly extending back panel is “prefastened” (recited in claim 40, element c) to the front waist region. Thus, the front elastic panel is not an independent element in claim 40.
8. When strip 8 is fastened to strip 5 of SCA (SCA, p. 5-7; Findings of Fact 4) on the front waist region of the absorbent chassis, there is an outward elastic extension from the front side region of the chassis, extending from strip 5 to strip 8, meeting the limitations of element c) of claim 40.

Larsson

9. Larsson describes a releasable bond in an absorbent article to improve reliability of maintaining the article in a prefastened position (Larsson, p. 2, ll. 1-24; p. 5, l. 25 to p. 7, l. 10 and 21-24; p. 8, ll. 21-23; p. 9, ll. 10-12; Figures), meeting the limitation of element e of claim 40 (Answer 4).

Bruemmer

10. “Bruemmer at col. 4, line 55-col. 5, line 4 teaches fasteners having a maximum unfastening force of no more than about 1500 grams . . . to permit an adult to open such fasteners but to prevent a child from doing so” (Answer 4-5).

DISCUSSION

SCA in view Larsson

The issue in this rejection, as pointed out by Appellants (Br. 6), is whether SCA in view of Larsson suggests elastic (b) back and (c) front panels which extend outwardly from the side edges of the absorbent chassis as recited in claim 40. The Examiner contends that these features are taught by SCA (Answer 5-6). Appellants contend that “the SCA Publication does not teach or suggest a pair of elastic front [c] and back [b] panels that extend laterally outward from said side edges and the Larsson Publication fails to correct this deficiency.” (Br. 8.)

We agree with the Examiner that elastic back and front panels are described by SCA (Findings of Fact 6-8; *see also* Answer 5-6).

Quoting from SCA, Appellants argue that when strips 8 and 13 are elastic, SCA teaches that they be laid relatively flat over line 6 (Br. 7) and that therefore they do not outwardly extend as required by the claim.

As we understand the manufacturing process taught in SCA, a lateral back panel extension from the chassis side is produced (element b of claim 40) because strip 8 is welded to the chassis at weld 17 and then extends *over* separation line 6 where strip 5 was cut (Findings of Fact 4.i, 4.j). This arrangement occurs whether strip 8 is laid flat or includes surplus material. Appellants’ remarks do not address this point. When the strip is elastic (SCA, p. 11, ll. 11-15; Findings of Fact 3), the back panel is elastic, meeting the limitations of element c) of claim 40 (Findings of Fact 8).

Element c) – the outwardly extending elastic front panel – is also present in SCA (Findings of Fact 7, 8). We recognize that claim 40 refers to “elastic front panels” as if they are separate entities, but in fact, the front

panels are “permanently connected” to the back panel, forming a continuous outward elastic extension from the back waist region of the absorbent chassis (Findings of Fact 7) where they are attached. When the outward extension from the back waist region is releasably attached to the front waist region it produces the appearance of an outward extension from the front region (*supra.* on p. 5). This structure is taught by SCA when elastic strip 8 is fastened to strip 5 (SCA, p. 5-7; Findings of Fact 4, 8). We acknowledge that, in the process of making the claimed absorbent article, the elastic front panel is separate from the elastic back panel (Specification, Fig. 3), but a method of making is not being claimed here; it is the product which is claimed.

The Examiner contends that it would have been obvious to have combined SCA with Larsson. “To employ a releasable bond as taught by Larsson on the SCA device would be obvious to one of ordinary skill in the art in view of the recognition that such would improve the reliability of maintaining the prefastened condition during use and the desirability of such by SCA, attention is reinvented to page 9, lines 17-20 of SCA” (Answer 4). Appellants do not identify a defect in the Examiner’s reason for combining SCA with Larsson. We find none. Accordingly, for the reasons stated above, we affirm the rejection of claim 40. Claims 42-47 and 49 fall with claim 40 because they were not argued separately.

SCA in view Larsson and Bruemmer

Claim 48 is rejected as obvious over SCA in view Larsson and Bruemmer. The Examiner finds that it would have been obvious to a person of ordinary skill in the art at the time the invention was made “to employ a releasable bond defining a peel strength of no more than 1500 grams [as

Appeal 2007-1329
Application 09/216,545

taught by Bruemmer] . . . in view of the recognition that such would allow intended opening by adults and the desirability of such by the prior art” (Answer 5). Since we find this reasoning sound, and Appellants do not challenge it (Br. 9), we affirm the rejection of claim 48.

SUMMARY

We affirm the rejections of Claims 40-47 and 49 under 35 U.S.C. § 103(a) as obvious over SCA in view of Larsson and of claim 48 under 35 U.S.C. § 103(a) as obvious over SCA in view of Larsson, and further in view of Bruemmer.

TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2006).

AFFIRMED.

lbg

KIMBERLY-CLARK WORLDWIDE, INC.
401 NORTH LAKE STREET
NEENAH WI 54956